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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PATSY R. WHETSELL,

Plaintiff

v.

NCO FINANCIAL SYSTEMS, INC.,

Defendant

10 - 4091

FILED

AUG 13 2010

Case No.:

MICHAEL KUNZ, Clerk
By Dep. Clerk**COMPLAINT AND DEMAND FOR
JURY TRIAL****(Unlawful Debt Collection Practices)****COMPLAINT**

PATSY R. WHETSELL ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the Commonwealth Pennsylvania and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Tennessee, with a mailing address of 3420 Burwood Rd., Knoxville, TN 37921.

7. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. § 1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road, Horsham, Pennsylvania, 19044.

9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6) and repeatedly contacted Plaintiff when seeking to collect a consumer debt from a different individual.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with

1 the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA
2 imposes civil liability on any person or entity that violates its provisions, and
3 establishes general standards of debt collector conduct, defines abuse, and provides
4 for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
5 FDCPA declare certain rights to be provided to or claimed by debtors, forbid
6 deceitful and misleading practices, prohibit harassing and abusive tactics, and
7 proscribe unfair or unconscionable conduct, both generally and in a specific list of
8 disapproved practices.

9 12. In particular, the FDCPA broadly enumerates several practices
10 considered contrary to its stated purpose, and forbids debt collectors from taking
11 such action. The substantive heart of the FDCPA lies in three broad prohibitions.
12 First, a “debt collector may not engage in any conduct the natural consequence of
13 which is to harass, oppress, or abuse any person in connection with the collection
14 of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false,
15 deceptive, or misleading representation or means in connection with the collection
16 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair
17 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §
18 1692f. The FDCPA is designed to protect consumers from unscrupulous
19 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
20 unconscionable collection methods, conduct which harasses, oppresses or abuses
21 any debtor, and any false, deceptive or misleading statements in connection with
22 the collection of a debt.

23 13. In enacting the FDCPA, the United States Congress found that “[t]here
24 is abundant evidence of the use of abusive, deceptive, and unfair debt collection
25 practices by many debt collectors,” which “contribute to the number of personal

1 bankruptcies, to marital instability, to the loss of jobs, and to invasions of
2 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
3 laws and procedures for redressing debt collection injuries to be inadequate to
4 protect consumers. 15 U.S.C. § 1692b.

5 14. Congress enacted the FDCPA to regulate the collection of consumer
6 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
7 abusive debt collection practices by debt collectors, to insure that debt collectors
8 who refrain from using abusive debt collection practices are not competitively
9 disadvantaged, and to promote consistent State action to protect consumers against
10 debt collection abuses.” 15 U.S.C. § 1692e.

11 12 **FACTUAL ALLEGATIONS**

13 15. Defendant and others it retained began in May of 2009 constantly and
14 continuously placing harassing and abusive collection calls to Plaintiff seeking and
15 demanding payment for an alleged consumer debt that Plaintiff is entirely
16 unfamiliar with.

17 16. Upon information and belief, the alleged debt Defendant was seeking
18 to collect arose out of transactions which were primarily for personal, family, or
19 household purposes.

20 17. Defendant and others it retained have repeatedly placed calls to
21 Plaintiff’s home telephone, demanding to speak with “Courtney or William”.

22 18. Plaintiff has, during every call, informed Defendant that she is not,
23 and does not know, Courtney or William.

24 19. Plaintiff instructed Defendant numerous times not to contact her any
25 further.

1 20. Nevertheless, Defendant continues to call, convinced that Plaintiff is
2 Courtney and referred to Plaintiff as a liar.

3 21. Defendant has never sent Plaintiff anything in writing and has never
4 validated the debt.

5 22. For well over a year now, extending well into 2010, Defendant has
6 continued to place harassing and invasive calls to Plaintiff's home telephone,
7 demanding payment for a debt she does not owe and knows nothing about.

8 23. The repetitive calls to Plaintiff are disturbing, harassing, an invasion
9 of privacy, and entirely unnecessary.

10 24. As Defendant has no reasonable belief in Plaintiff owing any debt to
11 Defendant or its client, if any, Plaintiff avers that Defendant's conduct is deceptive
12 as well as potentially extortive, in that Defendant seeks payment of a debt not
13 owed, before it will stop calling.

14 25. Moreover, Defendant's actions and means are/were misleading.

16 **CONSTRUCTION OF APPLICABLE LAW**

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18 26. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry,
19 deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes
20 strict liability, a consumer need not show intentional conduct by the debt collector
21 to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2nd Cir. 1996);
22 see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding
23 unintentional misrepresentation of debt collector's legal status violated FDCPA);
24 Clomon v. Jackson, 988 F. 2d 1314 (2nd Cir. 1993).

25 27. The FDCPA is a remedial statute, and therefore must be construed
liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235

(W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C. § 1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

28. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

COUNT I
DEFENDANT VIOLATED THE
FAIR DEBT COLLECTION PRACTICES ACT

29. In its actions and methods in attempting to collect Brock’s debt, Defendant violated the following aspects of the FDCPA:

- a. Defendant, in communicating with Plaintiff for the purpose of acquiring location information about the consumer, stated that said consumer owes a debt, in violation of 15 U.S.C. §1692b(2);

- b. Defendant, despite being requested to stop, communicated with Plaintiff more than once in an effort to acquire location information about the consumer, in violation of 15 U.S.C. §1692b(3);
- c. Communicating with Plaintiff about a debt allegedly owed by another individual, in violation of 15 U.S.C. §1692c(b);
- d. Harassing, oppressing or abusing Plaintiff in connection with the collection of a debt, in violation of 15 U.S.C. §1692d.
- e. Causing the telephone to ring and engaging Plaintiff in telephone conversation repeatedly and continuously with intent to annoy, abuse, or harass, in violation of 15 U.S.C. § 1692d(5);
- f. Using false, deceptive or misleading representations or means in connection with the collection of a debt, in violation of 15 U.S.C. §1692e;
- g. The use of unfair or unconscionable means to collect or attempt to collect any debt, in violation of 15 U.S.C. §1692f;

30. As a result of the above violations of the FDCPA, Defendant is liable to Plaintiff in the sum of Plaintiff's actual damages, statutory damages, and attorney's fees and costs.

WHEREFORE, Plaintiff, PATSY R. WHETSELL, respectfully prays for a judgment as follows:

- a. Declaratory judgment that Defendant's conduct violated the FDCPA;
- b. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);

- c. Statutory damages of \$1,000.00 for each violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- d. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1692k(a)(3); and
- e. Any other relief deemed appropriate by this Honorable Court.

JURY DEMAND

Pursuant to Civil Rule 38, Plaintiff hereby demands a trial by jury on all issues in this action, and any issues relating to the amount of attorneys' fees and litigation costs to be awarded should Plaintiff prevail on any of her claims in this action.

DATED: August 12, 2010

RESPECTFULLY SUBMITTED,
KIMMEL & SILVERMAN, P.C..

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